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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/603,981
Filing Date: June 24, 2003
Appellant(s): MILLER ET AL.

MAILED
AUG 15 2007
GROUP 3700

John M. Crawford
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 23 April 2007 appealing from the Office action mailed 19 May 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,762,339	KLUN et al.	7-2004
6,261,679	CHEN et al.	7-2001

2003/0236511 A1	JONES et al.	12-2003
6,013,252	TERAO et al.	1-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3, 6-9, 14-15, and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klun et al. (6,762,339) in view of Chen et al. (6,261,679).

Klun discloses all aspects of the claimed invention with the exception of the blood absorbent enhancing agent being present in a first amount adjacent the first surface and a second amount adjacent the second surface. Klun discloses an absorbent structure 10, as shown in figure 1, comprising a first web 11 having a first surface 12 and a second surface 13. The first web 11 comprises fibers, as disclosed in column 7, lines 62-66. A blood enhancing agent is disposed within the first web 11 by coating the first surface, as disclosed in column 26, line 50, to column 27, line 3.

Chen teaches the application of an antimicrobial agent in an absorbent structure, as disclosed in column 2, line 43, to column 3, line 17. The antimicrobial agent may be present in the absorbent structure in a gradient, as disclosed in column 15, lines 23-45, which would result in a first amount of the agent adjacent a first surface of the structure and a second amount of the agent adjacent the second surface of the structure.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the antimicrobial agent in the absorbent structure of Klun in a gradient, as taught by Chen, to provide a greater antimicrobial activity to one surface.

With respect to claim 2, the total amount of blood enhancing agent is 1.5% based on the weight of the fibers, as disclosed in column 26, line 52, to column 27, line 1.

With respect to claim 3, the blood enhancing agent is lactic acid, as disclosed in column 7, lines 38-39.

With respect to claim 6, the total amount of blood enhancing agent is 1.5% based on the weight of the fibers, as disclosed in column 26, line 52, to column 27, line 1.

With respect to claims 7 and 8, the web comprises cellulose, as disclosed in column 8, lines 13-16, which functions as a superabsorbent material.

With respect to claim 9, the absorbent structure 10 further comprises a second web 15, as shown in figure 1.

With respect to claim 14, Klun discloses an absorbent structure 10, as shown in figure 1, comprising a first web 15 having a density, and a second web 11 comprising fibers and a blood enhancing agent, as disclosed in column 7, lines 18-39.

With respect to claim 15, the blood enhancing agent is lactic acid, as disclosed in column 7, lines 38-39.

With respect to claims 24 and 25, the second web comprises cellulose, as disclosed in column 8, lines 13-16, which functions as a superabsorbent material.

Claims 4-5 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klun et al. (6,762,339) in view of Chen et al. (6,261,679), and further in view of Terao et al. (6,013,252).

Klun, as modified by Chen, discloses all aspects of the claimed invention with the exception of the blood enhancing agent further comprising sodium lactate.

Terao teaches the application of both lactic acid and sodium lactate to an absorbent structure, as disclosed in column 7, lines 42, 44, and 63-64. The application of these alone or in combination are disclosed in column 7, lines 46-48, as equivalent applications by Terao.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the absorbent structure of Klun with sodium lactate, since its application in combination with lactic acid is taught by Terao as being an equivalent application.

Claims 10-13, 18-23, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klun et al. (6,762,339) in view of Chen et al. (6,261,679), and further in view of Jones et al. (US 2003/0236511 A1).

Klun, as modified by Chen, discloses all aspects of the claimed invention with the exception of the composition and density of web 15. Klun discloses in column 8, lines 40-54, that web 15 is a liquid permeable sheet of non-stick material, but remains silent as to the materials comprising the sheet, or the density of the sheet.

Jones discloses an absorbent structure comprising first and second webs, as described in paragraph [0021]. The webs provide a suitable absorbent structure for a bandage. Since Klun discloses the absorbent structure is a bandage, it would be obvious to one of ordinary skill in the art at the time of invention to construct the web of Kun from the structure taught by Jones to provide a suitable multi-layer absorbent bandage.

With respect to claims 10 and 23, Jones discloses in paragraph [0021] that the web comprises cellulose.

With respect to claim 11, Jones discloses in paragraph [0022] that the web is compressed.

With respect to claim 13, Jones discloses in paragraph [0021] that the web includes superabsorbent.

With respect to claims 18 and 19, Jones discloses on page 5, Example 2, that the web comprises thermoplastic fibers which function to provide wet strength.

With respect to claims 12, 20, 22 and 27, Jones discloses in paragraph [0021] the density of the first web is 0.2 g/cc, and density of the second web is between 0.25 and 0.4 g/cc.

(10) Response to Argument

In response to the Appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Chen teaches a gradient of a material property within an absorbent structure, to provide, for example, the top surface of the structure with a different level of absorbency or hydrophilicity than the bottom surface of the structure, as described by Chen in column 15, lines 23-40.

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Chen further teaches that the gradient may be applied to the inclusion of additives to the absorbent structure, as disclosed in column 15, lines 37-40, to provide a greater activity of the additive on one side of the structure than the other. Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to modify the absorbent structure of Klun to provide the antimicrobial additive in a gradient, since Chen teaches that providing the additive in a gradient would allow for a greater antimicrobial activity on one surface of the structure than the other.

In response to the Appellant's argument that Chen does not teach a gradient in the amount of an additive in an absorbent structure, it is noted that Chen teaches a gradient in material properties including wettability and hydrophilicity, as disclosed in column 15, lines 23-40. Chen specifically discloses in column 15, lines 37-40, providing a hydrophilic binder material such that there is more of the material at one surface of the absorbent structure than the other. Chen teaches providing an additive in an amount that varies from one surface of an absorbent structure to another. Chen further discloses in column 3, lines 7-17, the use of antimicrobial additives in an absorbent structure. Since Chen teaches a gradient of an additive, and further teaches an antimicrobial as an additive, it would be obvious to one of ordinary skill in the art that the antimicrobial additive of Chen may be applied to an absorbent structure in a gradient.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

C. Lynne Anderson


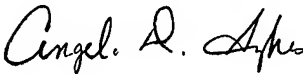


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